

REPORT OF THE 2006 SAN MARCOS CHARTER REVIEW COMMISSION

JUNE 27, 2006

Mo Johnson, Chair
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Legal Department

June 27, 2006


Mayor Narvaiz and City Council Members:

We, the members of the 2006 Charter Review Commission, held a series of ten meetings to consider possible amendments to the San Marcos City Charter. We have concluded our work, and we present this report to you with recommendations for amendments to the City Charter to be submitted to City voters for consideration at the November 7, 2006 election.

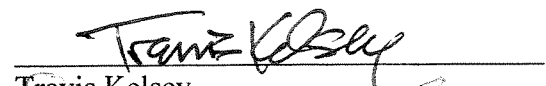
The report begins with a summary of our recommendations. This is followed by the actual text of each of the proposed substantive amendments. In the text of the amendments, underlining is used to indicate language proposed to be added, and ~~overstrike~~ indicates language proposed to be deleted. Each of the proposed text changes is followed by a brief statement of the Commission's rationale for proposing the change. The report concludes with proposed non-substantive amendments, which can be approved by the Council by ordinance.

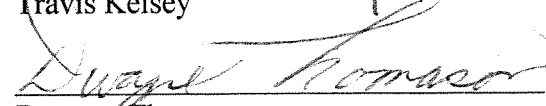
We appreciate the opportunity to serve you and the citizens of our community through the Charter review process.

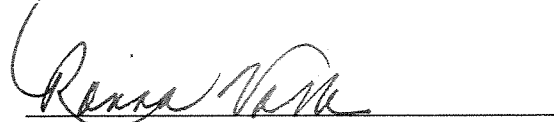
Respectfully submitted,
Members of the 2006 Charter Review Commission


Mo Johnson, Chair

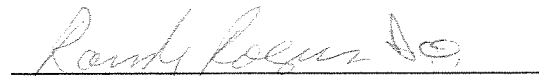

Ed Davis


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A. SUMMARY OF RECOMMENDATIONS

1. Amend Section 1.01 to more clearly explain the nature and functions of the Charter.
2. Amend Section 2.02 to restrict the city's eminent domain authority related to economic development.
3. Amend Section 3.01 to change the term of office of the mayor from two years to three years.
4. Amend Section 3.02 to delete the requirement that a council member use the phone number at the council member's residence as his or her home phone number, and change the minimum age of council members from 18 to 21.
5. Amend Section 3.04 to provide \$100 per meeting compensation for council members, for up to three meetings per month.
6. Amend Section 3.05 to provide that designation of a deputy mayor pro-tem is at the option of the council.
7. Amend Section 3.11 to allow ordinances amending the future land use map to adopted in the same manner as zoning map amendments, and to allow ordinances to be adopted under procedures expressly authorized by state law.
8. Amend Section 4.01(a) to allow a new city manager to become a resident of the city within 90 days rather than 30 days.
9. Amend Sections 4.03 and 4.04 to require municipal court judges to be licensed attorneys and to require the municipal court judges and the city attorney to be residents of the city (for newly-hired officials, within 90 days).
10. Amend Sections 5.01 and 5.05 related to the date for regular elections and runoff elections for city council.
11. Amend various sections in Article 6 related to the verification of petition signatures, to eliminate conflicts with state law.
12. Amend Section 7.02 regarding the duties and authority of the planning and zoning commission, to clarify the role of the commission and the city council related to conditional use permits.
13. Amend Section 8.02 to allow the city council more time each year to formulate the budget policy statement.
14. Amend Section 8.06 related to the public hearing on the budget.
15. Amend Section 9.02 related to the bond register, to delete the requirement that payments be recorded in the register.
16. Amend Section 11.08 to require the city council to adopt an ordinance regarding annual reports by public service companies.
17. Amend Section 12.02(a) and (b) related to the ethics review commission, to add references to ethics regulations established by ordinance, and to require the city council to maintain the code of ethics and the ethics review commission in an ongoing manner.
18. Amend various sections related to providing information to the public, and add a new Section 12.14 on providing notices to the public in electronic media.

The Commission expresses concern for the potential loss of data in electronic election equipment and recommends that the City consider methods for providing equipment that allows for the issuance of paper receipts to voters. The Commission also notes its recommendation that the City Council use its existing authority in Section 11.11 to establish a utility advisory board to provide citizen oversight for the City's electric, water and wastewater, and drainage utility systems.

B. SUBSTANTIVE REVISIONS

1. Amend Section 1.01 regarding the establishment and purposes of the Charter as follows:

Sec. 1.01. Establishment and purposes of charter ~~Incorporation.~~

We the people of San Marcos, do ordain and establish this Charter as the foundation of our municipal government, a home-rule city with the name "City of San Marcos". We further ordain that the City of San Marcos will exist for the purposes enumerated in this Charter, and will have the organizational structure described in this Charter, and will have the powers, duties, limitations, and immunities stated in this Charter. The inhabitants of the City of San Marcos, Hays County, Texas, within its corporate limits, as described by metes and bounds in Volume A, pages 71 and 72, Hays County minutes, dated July 11, 1877, and as extended by ordinances of the City of San Marcos enacted subsequent thereto, shall continue to be and are hereby constituted a body politic and corporate, in perpetuity, under the name of the "City of San Marcos", hereinafter referred to as the "city", with such powers, privileges, rights, duties, and immunities as are herein provided.

Rationale: The Commission believes that this introductory section of the Charter presents the opportunity to emphasize the nature of the Charter as the creation of the community's people, and to explain the basic role and functions of the Charter, much like the preamble to the federal Constitution. The proposed new wording takes advantage of this opportunity and replaces the current wording of this section.

2. Amend Section 2.02 regarding the city's eminent domain authority as follows:

Sec. 2.02. Eminent domain.

(a) The city shall have the full power and right to exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter or by the constitution and laws of the State of Texas. The city may exercise the power of eminent domain in any manner authorized or permitted by the constitution and laws of this state, subject to the right of the owner of the property taken to adequate compensation, and subject to the provisions of this section. The power of eminent domain shall include the right of the city to take the fee in land so condemned, and the right to condemn public property for such municipal or public purposes. The city shall have and possess the power of eminent domain ~~condemnation~~ for any municipal or public purposes, subject to the provisions of this section.

(b) However, the city shall not use the power of eminent domain to acquire property for transfer, or for lease in substantial part, to a private third party for the purpose of economic development. The term "economic development" means any activity to increase tax revenue, tax base, employment, or the general economic health of the City, when that activity does not result in (1) the transfer of land to public ownership, such as for a road, public utility facility, or municipal building; (2) the transfer of land to a private entity that is a common carrier, such as a utility provider; or (3) the transfer of property to a private entity to remove a

harmful use of the land, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or the acquisition or transfer of abandoned property.

Rationale: In the *Kelo v. City of New London* case decided last year, the United States Supreme Court held that the provision of the U.S. Constitution limiting the use of eminent domain to property acquisitions for “public use” did not prohibit a city from acquiring property for economic development purposes. The *Kelo* case involved a plan under which the city acquired property from private owners and then sold it to other private owners for redevelopment. Since the *Kelo* case was decided, the Texas Legislature enacted a new statute limiting the use of eminent domain authority in Texas with respect to economic development. The Commission believes, however, that the new state statute does not go far enough in restricting the City’s eminent domain authority. The proposed new language will specifically define the limited circumstances in which eminent domain can be used for economic development purposes. Under these changes, if the City decided in the future to undertake a broad-scale redevelopment project that involved acquisition of property from private owners for transfer to other private owners, it would have to acquire the property through negotiation, not through eminent domain.

3. Amend Section 3.01 regarding the term of office of the mayor:

Sec. 3.01. Number, selection and term.

(c) Each council member for places 1, 2, 3, 4, 5 and 6 shall hold office for a period of three years, staggered so that two members shall be elected to a regular term each year. The council member elected to the place of mayor shall hold office for a period of three ~~two~~ years.

Rationale: The proposed change will create uniformity in the terms of office of all members of the city council. The Commission heard from several past mayors who considered the term of office to be too brief to undertake any significant initiatives. A change to a four-year term of office for the mayor was considered, but the Commission considers the three year term preferable. The intent of the Commission is that this change, if approved by the voters, would not take effect until the end of the term of office of the person elected to the position of mayor in this year’s election process.

4. Amend Section 3.02(a) regarding the qualifications for city council members:

Sec. 3.02. Qualifications.

(a) Each member of the city council, in addition to having other qualifications prescribed by law:

(1) Shall be a qualified voter of the city;

(2) Shall have had his or her principal physical residence for at least one year preceding the election within the corporate limits of San Marcos; or shall have had his or her principal physical residence for a period of not less than one year immediately preceding the person's election, in any territory not formerly within the corporate limits of the city, but which is annexed under the provisions of Section 2.03 of this Charter, and shall maintain his or her principal physical residence within the corporate limits of San Marcos throughout his or her term of office; for purposes of this subsection, a person must meet all of the following to meet the requirement for a "principal physical residence" in the city:

(A) The person must use the residence address for voter registration and driver's license purposes;

(B) The person must use the residence address as the person's home address on documents such as employment records, resumes, business cards, government forms and loan applications;

~~(C) The person must use the phone number at the residence as the person's home phone number; and~~

~~(C)~~ (D) The person must not claim a homestead exemption on any property other than the residence;

(3) Shall not hold any other office or employment under the city government while a member of the council, except a member of the city council may be appointed by the city council to represent the council on any board, commission, committee, organization or entity in the council's sole discretion so long as that person's service does not extend beyond the person's council term; ~~and~~

(4) Shall not be an officer or director of any public service company within the city, or outside the city but serving inhabitants of the city, nor be the owner or proprietor of any public service company in the city. "Public service company" is defined as any company, individual, partnership, corporation or other entity recognized by law that, uses any of the city's streets, alleys, highways or other public property to carry out its principal purposes, including but not limited to water, wastewater, gas, electricity and, telecommunications utilities, commercial railway or street railway services, public transit services, solid waste collection, and vehicles for hire; and

(5) Shall be at least 21 years of age.

Rationale: The first proposed change is intended to keep the Charter current with the trend towards mobile phones and away from land line phones. The second proposed change, to increase the minimum age for council members, relates to the significant decision-making responsibilities of council members and the need for maturity in considering these decisions.

5. Amend Section 3.04 related to compensation of city council members:

Sec. 3.04. Compensation.

Members of the city council shall receive compensation in the amount of \$100 for each

council meeting attended by them, with a maximum of three meetings per month for which compensation is provided. serve without pay or compensation; provided, however, that they Council members shall be entitled to all necessary expenses incurred in the performance of their official duties. There shall be provided in each annual city budget an amount for the compensation and expenses of the mayor and of each council member. The mayor and the members of the city council shall be reimbursed for the amounts so provided for in the annual city budget for their actual official city business expenses. The city council by resolution or ordinance shall provide for a means of determining what expenses are reimbursable and what requirements must be met for reimbursement.

Rationale: Service on the city council requires a person to commit a large amount of time and effort. Providing per-meeting compensation for council members could make service on the council more attractive to potential candidates, and could foster better meeting attendance.

6. Amend Section 3.05 regarding the designation of a deputy mayor pro tem:

Sec. 3.05. Mayor, mayor pro tempore and deputy mayor pro tempore.

The mayor shall preside at all meetings of the council and shall be recognized as head of the city government for all ceremonial purposes, for the purpose of receiving service of civil process, and for emergency management purposes. The mayor, as a member of the council, shall be entitled to vote upon all matters considered by the council but shall have no veto power. At its first meeting following each regular election of council members, the council shall by election designate a mayor pro tempore, and may in addition designate a deputy mayor pro tempore, who each shall serve in such capacity for a period of one year; provided, however, that in the event a runoff election is required the city council shall not designate a mayor pro tempore or deputy mayor pro tempore until the runoff election is completed and the duly elected candidates have been officially seated on the council. The mayor pro tempore shall act as mayor during the absence or disability of the mayor, and shall have power to perform every act the mayor could perform if present. The deputy mayor pro tempore shall act as mayor during the absence or disability of the mayor and mayor pro tempore, and shall have power to perform every act the mayor could perform if present.

Rationale: The proposed change will make it optional, not mandatory, for the City Council to designate a deputy mayor pro tem.

7. Amend Section 3.11 regarding the adoption of ordinances amending the City future land use map, and the adoption of ordinances under procedures expressly authorized by state law:

Sec. 3.11. Procedure for passage of ordinances.

(a) The council shall legislate by ordinance, and the enacting clause of every ordinance shall be: "Be it ordained by the City Council of the City of San Marcos".

(b) The city attorney shall approve the legality of all ordinances adopted by the council, or

shall file with the city clerk written legal objections thereto. Evidence of approval by the city attorney may be by notation on the ordinance itself, or by separate instrument.

(c) Every ordinance enacted by the council shall be signed by the mayor, the mayor pro tem, or two council members and shall be filed with and recorded by the city clerk.

(d) All proposed ordinances requiring a public hearing or hearings shall be finally acted upon by the city council within 90 days of the most recent public hearing. If final action does not occur within the 90 day period following the public hearing, then another public hearing shall be held before final action on the ordinance. Unless notice requirements are provided by other law, the city clerk shall publish a notice of each public hearing by the city council on an ordinance in a newspaper of general circulation in the city before the public hearing.

(e) ~~All~~ Ordinances shall be presented to council and acted on in open meetings on three ~~several~~ separate days, unless:

(1) an ordinance is adopted as an emergency measure by the favorable vote of five or more council members;

(2) an ordinance relates to the changing of a future land use map or zoning district designation, in which case it may be approved by the city council on one reading only, if all other requirements are met, and the council has the opportunity to vote to reconsider the ordinance at the next regular meeting after the change was approved if reconsideration is requested by a council member who was absent from the previous meeting or who voted on the prevailing side at the previous meeting; or

(3) the adoption of an ordinance under a different procedure is expressly authorized by state law .

(f) At the time of the first presentation each ordinance shall be read aloud unless it is publicly posted, available at a readily accessible location and filed with the city clerk at least 72 hours prior to the meeting at which it is to be considered, in which event only the caption need be read aloud.

(g) Unless otherwise provided by law or by this Charter, no ordinance shall become effective until ten days after the date of its final passage, unless it relates to the immediate preservation of the public peace, health, or safety, is adopted as an emergency measure, and contains a statement of the nature of the emergency. In such event, the emergency ordinance shall become effective upon publication of notice of the ordinance in accordance with this article.

~~(h) Notwithstanding any of the foregoing, ordinances relating to the changing of a zoning district designation may be approved by the city council on one reading only, if all other requirements are met. The council may, however, vote to reconsider any zoning district change at the next regular meeting after the change was approved if reconsideration is requested by a council member who was absent from the previous meeting or who voted on~~

~~the prevailing side at the previous meeting.~~

Rationale: The proposed changes will allow the special adoption process that applies to zoning map changes to also apply to changes to the future land use map. Zoning and land use map changes often occur concurrently, and these changes will allow them to be considered and voted on by the Council together. In addition, a provision is added to allow ordinances to be adopted using a specific adoption procedure expressly authorized under state law. An example of this is the adoption of ordinances calling bond elections or authorizing the issuance of bonds, which, under state law, require only one reading for adoption.

8. Amend Section 4.01(a) regarding the time within which the city manager must become a resident of the city upon hiring:

Sec. 4.01. City manager.

(a) *Appointment and qualifications:* The city council shall appoint a city manager who shall be the chief administrative and executive officer of the city, and shall be responsible to the city council for the administration of all the affairs of the city. The manager shall be chosen by the city council solely on the basis of executive and administrative training, experience and ability; and need not, when appointed, have his or her principal physical residence in the City of San Marcos. The manager shall establish his or her principal physical residence in the city, within 90 ~~30~~ days after appointment, and shall have his or her principal physical residence in the city continuously thereafter while holding that office.

Rationale: The proposed change will allow a more realistic time frame for a newly hired city manager to secure a residence in the city.

9. Amend Sections 4.03 and 4.04 related to the qualifications for the municipal court judge and the city attorney:

Sec. 4.03. Municipal court.

(a) A municipal court is established for the trial of misdemeanor offenses, with jurisdiction, powers and duties as prescribed by ordinance and state laws.

(b) The city council shall appoint a presiding judge for the municipal court and any associate judges it deems advisable. The presiding judge and each associate judge shall be a competent and duly qualified and licensed attorney. The presiding judge shall establish his or her principal physical residence in the city within 90 days after appointment, and shall have his or her principal physical residence in the city continuously thereafter while holding that office. The compensation of the judges shall be fixed by the city council.

(c) The city manager shall appoint a municipal court clerk and any assistants the manager deems advisable. The compensation of the municipal court clerk and assistants shall be fixed by the city manager.

Sec. 4.04. City attorney.

The city council shall appoint a city attorney, who shall be a competent and duly qualified and licensed attorney, practicing law in the State of Texas. The city attorney shall establish his or her principal physical residence in the city, within 90 days after appointment, and shall have his or her principal physical residence in the city continuously thereafter while holding that office. The city attorney's compensation shall be fixed by the city council. The city attorney may appoint an assistant or assistants with the approval of the city council. The city attorney, or other attorneys selected by the city attorney with the approval of the city council, shall represent the city in all litigation. The city attorney shall be the legal advisor and counsel for the city and all city officers and administrative units; provided, that the city council may retain special counsel at any time it deems same appropriate and necessary. The city attorney shall prepare or review all ordinances and shall prosecute all criminal cases in the municipal court in person or through an assistant.

Rationale: The proposed change to require the municipal judges to be licensed attorneys is based on the need for a high level of expertise in presiding over municipal court proceedings, and to allow the municipal court to be readily converted to a “municipal court of record” should the council decide to make that change. The change to require the judges and the city attorney to be residents of the city would foster a higher degree of understanding of local issues, and a higher level of involvement in the community, than living outside the city allows.

10. Amend Sections 5.01 and 5.05 related to the date for regular elections and runoff elections for city council:

Sec. 5.01. Elections.

The regular city election shall be held annually on the fourth ~~second~~ uniform election date of the calendar year as provided by state law.

Sec. 5.05. Election by majority.

At any regular or special municipal election the candidates in each place on the ballot who shall have received the majority of votes cast in such election for such place shall be declared elected. In the event no candidate for a designated place on the city council receives a majority of the votes cast for that place in the regular or special election, a runoff election shall be held between the two candidates who received the greatest number of votes for such place. The runoff election shall be held not earlier than the 20th or later than the 45th day after the date the final canvass of the regular or special election is completed ~~exactly four weeks following the preceding regular or special election.~~

Rationale: The Council, using authority granted by the State Legislature, adopted an ordinance changing the City’s regular election date, so the change to Section 5.05 is regarded as housekeeping. Since the regular election is now on a Tuesday, the language in Section 5.05 requires a runoff election to be on a Tuesday. This can pose difficulties for election workers and for securing polling

places. The proposed change to 5.05 will allow the same flexibility as under state law for setting the runoff election date.

11. Amend various sections in Article 6 related to the verification of petition signatures:

Sec. 6.03. Forms of petitions.

Initiative petition papers shall contain the full text of the proposed legislation in the form of an ordinance, including a descriptive caption. Referendum petition papers shall contain a sufficient description of the ordinance sought to be referred to identify it, or if the ordinance has been passed by the council, the full text of the ordinance sought to be referred shall be included in such papers. ~~The signatures to the initiative or referendum petitions need not be all appended to one paper, but each signer shall sign his or her name in ink or indelible pencil, together with a notation showing residence address and voter registration number. No signature shall be counted where there is reason to believe it is not the actual signature of the purported signer or that it is a duplication either of name or of handwriting used in any other signature on the petition, and no signature shall be counted unless it is accompanied by all of the information required by applicable state law. Before signatures on any petition paper may be counted, one of the signers of such petition paper, a qualified voter, shall make oath or affirmation before the city clerk or any other officer competent to administer oaths or affirmations, that the statements made therein are true, that each signature to the paper appended is the genuine signature of the person whose name purports to be signed thereto, and that such signatures were placed thereon in that person's presence.~~

Sec. 6.04. Filing, examination and certification of petitions.

~~Within 45 days after an initiative or referendum petition is filed, the city clerk shall determine whether the same is properly signed by the requisite number of qualified voters. The city clerk shall declare void any petition paper which does not have an affidavit attached thereto as required in Section 6.03 of this article. In examining the petition the clerk shall write the letters "D.V." in red ink opposite the names of signers found not qualified. After completing examination of the petition the clerk shall certify the result thereof to the council at its next regular meeting. If the certificate of the city clerk shall show an initiative or referendum petition to be insufficient, the clerk shall notify the person filing the petition, and it may be amended within ten days from the date of such notice by filing a supplementary petition upon additional papers signed and filed as provided for in the original petition. Within 45 days after such amendment is filed, the clerk shall examine the amended petition and certify as to its sufficiency. If the amended petition is then found to be insufficient no further proceedings shall be had with regard to it.~~

[renumber Sections 6.05 and 6.06 as 6.04 and 6.05, respectively]

Sec. 6.06 7. Power of recall.

(a) The people of the city reserve the power to recall any elected officer of the City of San Marcos and may exercise such power by filing with the city clerk a petition demanding the removal of the officer, signed by at least ten per cent of the qualified voters of the city.

~~(b) The recall petition shall be on a form approved shall be provided only by the city clerk. No signature shall be counted where there is reason to believe it is not the actual signature of the purported signer or that it is a duplication either of name or handwriting used in any other signature on the petition, and no signature shall be counted unless it is accompanied by all of the information required by applicable state law. Before signatures on any recall petition form may be counted, one of the signers of such petition paper, a qualified voter in the City of San Marcos, shall make oath before the city clerk, that the statements made therein are true, that each signature to the paper appended is the genuine signature of the person whose name purports to be signed thereto, and that such signatures were placed thereon in the affiant's presence. Any recall petition form supplied by the city clerk shall be valid for 45 days from the date of its issuance and the expiration date and time shall be noted on the petition form by the city clerk at the time of its issuance. All such forms must be returned to the city clerk before their respective expiration dates in order to be eligible to be verified and certified by the city clerk. The city clerk shall have 45 days from the receipt of any recall petition or petitions to verify and certify to their sufficiency.~~

[renumber Sections 6.08, 6.09 and 6.10 as 6.07, 6.08 and 6.09, respectively]

Sec. 6.10. Examination and certification of petitions.

(a) Within 45 days after an initiative, referendum or recall petition is filed, the city clerk shall determine whether the petition is properly signed by the requisite number of qualified voters. The city clerk shall use the standards and procedures described in state law to make this determination.

(b) In examining a petition, the clerk shall clearly note signatures found to be invalid.

(c) After completing examination of a petition, the clerk shall certify the result to the council at its next regular meeting.

(d) If the certificate of the city clerk shows an initiative or referendum petition to be insufficient, the clerk shall comply with the provisions of state law regarding the filing of a supplementary petition, if applicable. Within 45 days after a supplementary petition is filed, the clerk shall examine the petition and certify as to its sufficiency. If the original petition and supplementary petition are found to be insufficient, no further proceedings shall be had with regard to them.

Rationale: Citizens may submit petitions under the Charter to initiate an ordinance, to repeal an ordinance after adoption by the council, or to recall a council member. The Charter contains detailed provisions related to the information required on these petitions, and the manner in which they are certified by the city clerk. These provisions served a purpose during a time when state laws did not address the topics. However, the State Legislature has enacted increasingly detailed provisions in the Texas Election Code on these same subjects. This has resulted in some conflicts between the Charter

and state law. The proposed revisions remove language from the Charter that conflicts with State law, and replace it with references to the applicable State laws.

12. Amend Section 7.02 related to the duties and authority of the planning and zoning commission:

Sec. 7.02. Powers and duties of the commission.

The commission shall have the power and be required to:

(1) Be responsible to and act as an advisory body to the council on all matters related to the physical growth and development of the city.

(2) Review and be the final approval authority for the subdivision and platting of land within the city and its extraterritorial jurisdiction. The council or the commission may expressly delegate authority to approve certain minor subdivision plats to the director of the planning and development services department in accordance with the provisions of state law.

(3) Hold a public hearing and recommend to the city council the approval or disapproval of any proposed change to the city's official zoning map.

(4) Hold public hearings and approve or deny ~~specific conditional~~ use permit applications made under the city's zoning ordinances, subject to an appeal of such decisions to the city council. The council, on appeal, may uphold, modify, or reverse the decision of the commission. The council may reverse ~~may sustain such an appeal and overturn~~ a decision of the commission to deny a permit only by a three-fourths vote of the council. Appeals to the council on conditional use permit applications will be based on the record before the commission, and will be governed by the substantial evidence rule. Decisions of the commission to revoke or suspend conditional use permits will be final and may not be appealed to the council.

(5) Submit annually to the city council, not less than one hundred and twenty days prior to the beginning of the fiscal year, a list of recommended capital improvements found necessary or desirable.

(6) Hold an annual public hearing on the Land Development Code ~~subdivision ordinance~~ and recommend any necessary or desirable changes to the council.

~~(7) Hold an annual public hearing on the zoning ordinance and recommend any necessary or desirable changes to the council.~~

~~(7 8)~~ Perform an ongoing review of the city's master plan to include:

(A) Holding an annual public hearing on the plan and recommend any necessary or

desirable changes to the council;

(B) Holding public hearings and making recommendations to the council regarding updates to the land use and transportation elements of the plan at least once every three years; and

(C) Holding public hearings and making recommendations to the council regarding the update of the entire master plan document at least once every ten years.

(8 9) Perform such other duties and be vested with such other powers as the council may prescribe in accordance with state law.

(9 10) Require information from the administrative units of city government in relation to the duties of the commission listed under this section.

Rationale: The proposed changes will clarify the roles of the planning and zoning commission and city council for issuance and revocation of conditional use permits, and will update the Charter language related to the Land Development Code. The Planning and Zoning Commission also recommends these changes.

13. Amend Section 8.02 related to the city council budget policy statement:

Sec. 8.02. Preparation and submission of budget.

The city manager, not less than 30 days prior to the time the city council makes its tax levy for the current fiscal year, shall file with the city clerk a proposed budget, which budget shall provide a complete financial plan for the fiscal year, and shall contain a budget message explaining the budget, containing an outline of the proposed financial policies of the city for the ensuing fiscal year, setting forth the reasons for salient changes from the previous fiscal year in expenditure and revenue items, and explaining any major changes in financial policy. By April 30th ~~March 31st~~ of each year, after a public hearing, the city council shall formulate a policy statement to be used by the city manager as direction during the preparation of the proposed budget.

Rationale: The budget policy workshop at present is too far in advance of the rest of the budget process. This change would allow the budget policy workshop to be held later in the year, when a firmer basis is available for planning the following year's budget.

14. Amend Sections 8.06, 8.09 and 8.10 related to the budget adoption process:

Sec. 8.06. Notice of public hearing on budget.

Not less than 30 days before the date the city council adopts the budget ~~At the meeting of the city council at which the budget is submitted,~~ the city council shall fix the time and place of public hearing on the budget and shall cause to be published in a one or more ~~a one or more~~ newspapers of

general circulation in the City of San Marcos, and through electronic media, a general summary of the proposed budget and a notice of the hearing setting forth the time and place thereof, the time for which publication shall be in accordance with applicable law.

Sec. 8.09. Adoption after public hearing.

The budget shall be adopted only after 10 14 days have lapsed since the public hearing on the budget.

Sec. 8.10. Date of final adoption.

The budget shall be finally adopted not later than seven 15 days prior to the expiration of the fiscal year, and should the city council fail to so adopt a budget, the then existing budget together with its tax levying ordinance and its appropriation ordinance, shall be deemed adopted for the ensuing fiscal year.

Rationale: These changes would give the city council more time for the budget deliberation process. State law imposes a time schedule for adoption of the tax rate. These changes would allow the council more time to adopt the budget without running into conflicts with the State law schedule for adopting the tax rate. A change is also made to require the public hearing notice to be published in media other than a newspaper.

15. Amend Section 9.02 related to the bond register:

Sec. 9.02. Bond register.

The city manager or the manager's designated representative shall prepare, maintain and cause to be filed in the city manager's office a complete bond register, showing all bonds and certificates of obligation, the date and amount thereof, the rate of interest, a schedule of maturity dates and a record of all bonds and all other transactions of the city council having reference to the refunding of any indebtedness of the City of San Marcos. When bonds or certificates of obligation or their coupons are paid, their ~~payment or~~ cancellation shall be noted in the register.

Rationale: The Finance Department keeps a list of all bonds and certificates of obligation, with issuance and maturity dates and interest rates, but individual payments are not recorded in this list. Modern practice provides that at the time bonds or certificates of obligation are issued, the City is required to contract with a "paying agent" (usually a bank or other financial institution) that ensures that payments on the instruments are properly made. All payments on bonds and certificates of obligation are also recorded in the City's financial statements.

16. Amend Section 11.08 regarding annual reports by public service companies:

Sec. 11.08. Public service companies to file annual reports.

The city council by ordinance ~~shall~~ may require each public service company operating within the corporate limits of the city to file a sworn annual report of the receipts from the operation of the company for the current year, how expended, how much thereof for betterments or improvements, the rate of tolls or charges for services rendered to the public, and any other facts or information that the council may deem pertinent for its use in intelligently passing upon any questions that may arise between the city and the public service company. These reports shall be filed with the city clerk, and preserved for the use of the city council. The reports may be reviewed periodically by the council to determine the propriety of the rates being charged.

Rationale: The Charter Review Commission believes the city council should be required to adopt an ordinance regarding the filing of annual reports by public service companies.

17. Amend Section 12.02(a) and (b) related to the ethics review commission:
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Sec. 12.02. Personal interest and code of ethics.

(a) (1) All elected and appointed officers of the city shall comply with applicable requirements of state law and city ordinances pertaining to conflicts of interest of local government officials.

(2) The code of ethics adopted by the city council under subsection (b) of this section shall require annual disclosure by members of the city council and city boards and commissions of their relevant ~~substantial~~ interests in business entities and real property as defined under state law and city ordinances.

(3) No member of the city council, and no employee of the city shall have a financial interest in the sale to the city of any land, materials, supplies or service, outside of the person's position with the city. Any person having such an interest shall be ineligible for election as a city council member or appointment as an employee of the city, and any city council member or employee who acquires such an interest shall forfeit the office or employment. Any violation of this provision with the actual or constructive knowledge of the city council member or employee shall render the contract voidable by the city manager or the city council. These provisions shall not apply to acquisitions of property by the city as a result of eminent domain proceedings or the threat of eminent domain proceedings.

(b) It is the policy of the City of San Marcos that all city officials and employees shall act and conduct themselves both inside and outside the city's service so as to give no occasion for distrust for their integrity, impartiality or of their devotion to the best interest of the City of San Marcos and the public trust which it holds. To this end and to expressly assure its accomplishment, the city council shall establish and maintain an ethics review commission, and shall adopt and maintain ~~which shall propose~~ a code of ethics for officials and employees

of the City of San Marcos ~~for adoption by in ordinance form by the city council~~. The city council shall appoint an ethics review commission ~~committee~~ composed of seven citizens of the City of San Marcos to serve three-year staggered terms. A chair shall be elected by a majority of the commission after the annual appointment of members to the commission.

Rationale: The City's "Code of Ethics" ordinance was recently revised, at the recommendation of the Ethics Review Commission, to strengthen conflict of interest and financial disclosure requirements over and above what is required under state law. These changes would make it clear that the ethics review commission oversees the administration of both state and city ethics regulations. In addition, changes are proposed to clarify the city council's obligation to maintain the code of ethics and the ethics review commission in an ongoing manner.

18. Amend various sections related to providing information to the public, and add a new Section 12.14 on providing notices to the public in electronic media:

Sec. 3.11. Procedure for passage of ordinances.

(d) All proposed ordinances requiring a public hearing or hearings shall be finally acted upon by the city council within 90 days of the most recent public hearing. If final action does not occur within the 90 day period following the public hearing, then another public hearing shall be held before final action on the ordinance. Unless notice requirements are provided by other law, the city clerk shall publish a notice of each public hearing by the city council on an ordinance in a newspaper of general circulation in the city, and through electronic media, before the public hearing.

Sec. 3.12. Publication of ordinance.

Except as otherwise provided by law or by this Charter, the city clerk shall give notice of the enactment of every penal ordinance and of every other ordinance required by law or by this Charter to be published, by causing the said ordinance, or its caption and penalty, to be published at least one time within ten days following the date of final passage thereof in a ~~some~~ newspaper of general circulation within the city. The ordinance shall also be made available at the city's web site. The city clerk shall note on every ordinance and on the record thereof the dates and medium of its publication, and such notation shall be prima facie evidence of compliance with the requirements of this section.

Sec. 3.16. Audit and examination of city books and accounts.

The city council shall cause an annual audit to be made of the books and accounts of each and every department of the city. At the close of each fiscal year a complete audit shall be made by a certified public accountant, who shall be selected by the city council, and who shall have no personal interest, direct or indirect, in the fiscal affairs of the city government or of any of its officers. Such audit shall include a recapitulation of all internal audits made during the course of each fiscal year, and all audit reports shall be filed with the city council, shall be available for public inspection in hard copy and at the city web site, and shall be

made a part of the archives of the city. Such accountant, so selected, shall not maintain or keep any of the city's accounts or records.

Sec. 8.06. Notice of public hearing on budget.

At the meeting of the city council at which the budget is submitted, the city council shall fix the time and place of public hearing on the budget and shall cause to be published in a one or more newspapers of general circulation in the City, and through electronic media, ~~of San Marcos~~ a general summary of the proposed budget and a notice of the hearing setting forth the time and place thereof, the time for which publication shall be in accordance with applicable law.

Sec. 8.11. Effective date of budget; certification; copies made available.

Upon final adoption, the budget shall be in effect for the fiscal year. A copy of the budget, as finally adopted, shall be filed with the city clerk and such other officials as may be designated by law. The final budget shall be ~~printed or otherwise reproduced and copies shall be made available~~ in hard copy and at the city web site for the use of all offices, departments and agencies and for the use of interested persons and civic organizations.

Sec. 12.14. Notices to the public.

Whenever a provision of this charter requires the city to publish a public hearing notice “through electronic media”, this shall be accomplished by making the information available at the city web site and on television channels over which the city has control of programming.

Rationale: The Charter Review Commission believes that where the Charter calls for dissemination of information to the public, the city web site and television channels should be used.

B. NON-SUBSTANTIVE REVISIONS

A change to the Charter approved by voters in 2000 allows the City Council, by ordinance, to “renumber, rearrange, and make non-substantive corrections” to the Charter. The Charter Review Commission recommends that the City Council make the following revisions using this authority:

1. Amend Sections 3.09 and 3.10 to create subsections in them as follows:

Sec. 3.09. Meetings of the city council.

(a) The city council shall hold at least two regular meetings in each month at a time to be fixed by it for such regular meetings, and may hold as many additional meetings during the month as may be necessary for the transaction of the business of the city and its citizens.

(b) All meetings of the city council shall be held within the city, except that the city council

may conduct a meeting at a location outside the city after publishing notice of the meeting in one issue of a newspaper in general circulation in the City of San Marcos.

(c) All meetings of the city council shall be public; however the council may recess for the purpose of discussing in a closed session any matter permitted to be so discussed by state law, provided that the general subject matter for consideration is expressed in the motion calling for such a session and that final action thereon shall not be taken by the council until the matter is placed on the agenda.

(d) Special meetings of the council shall be called by the city clerk upon the written request of the mayor or any three members of the city council.

(e) The city council shall provide by ordinance for procedures to call meetings, set meeting agendas, conduct meetings, provide for reasonable time limits on presentations to the council and any other matters necessary to the efficient and fair conduct of the public's business.

Sec. 3.10. Rules of procedure.

(a) The city council shall determine by ordinance its own rules of procedure and order of business.

(b) Four or more council members shall constitute a quorum, but no action of the council shall be of any force or effect unless it is adopted by the favorable votes of four or more of the council members.

(c) Minutes of all meetings of the council, including the vote of "ayes" and "noes" upon the passage of all ordinances and resolutions, shall be taken and recorded, and such minutes shall constitute a permanent record to which any citizen may have access at all reasonable times.

2. Amend Section 8.15 as follows:

Sec. 8.15. Estimated expenditures shall not exceed estimated resources.

The total estimated expenditures of the general fund and debt service fund shall not exceed the total estimated resources of each fund (prospective income plus cash on hand). The classification of revenue and expenditure accounts shall conform as nearly as local conditions will permit to the uniform classification as promulgated by the ~~National Committee on~~ Governmental Accounting Standards Board or some other nationally accepted classification.